

111TH CONGRESS
1ST SESSION

S. 363

To make determinations by the United States Trade Representative under title III of the Trade Act of 1974 reviewable by the Court of International Trade and to ensure that the United States Trade Representative considers petitions to enforce United States trade rights, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2, 2009

Ms. SNOWE (for herself, Mr. ROCKEFELLER, and Mr. CONRAD) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To make determinations by the United States Trade Representative under title III of the Trade Act of 1974 reviewable by the Court of International Trade and to ensure that the United States Trade Representative considers petitions to enforce United States trade rights, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Trade Complaint and
5 Litigation Accountability Improvement Measures Act” or
6 the “Trade CLAIM Act”.

1 **SEC. 2. REVIEW OF DETERMINATIONS OF THE UNITED**
 2 **STATES TRADE REPRESENTATIVE BY THE**
 3 **COURT OF INTERNATIONAL TRADE.**

4 Section 1581 of title 28, United States Code, is
 5 amended—

6 (1) in subsection (i)—

7 (A) in the matter preceding paragraph (1),
 8 by striking “subsections (a)–(h)” and inserting
 9 “subsections (a)–(h) and (k)”; and

10 (B) in paragraph (4), by striking “sub-
 11 sections (a)–(h)” and inserting “subsections
 12 (a)–(h) and (k)”; and

13 (2) by adding at the end the following:

14 “(k) The Court of International Trade shall have ex-
 15 clusive jurisdiction of any civil action commenced by a pe-
 16 titioner requesting that the United States Trade Rep-
 17 resentative take action under section 301 of the Trade Act
 18 of 1974 (19 U.S.C. 2411) to review de novo any deter-
 19 mination, finding, or action of the United States Trade
 20 Representative under section 301(a), 302(a)(2),
 21 304(a)(1), 305(a)(2)(A)(ii), 306(b), or 307(a)(1) of the
 22 Trade Act of 1974 (19 U.S.C. 2411(a), 2412(a)(2),
 23 2414(a)(1), 2415(a)(2)(A)(ii), 2416(b), and
 24 2417(a)(1)).”.

1 **SEC. 3. CONSIDERATION BY THE UNITED STATES TRADE**
 2 **REPRESENTATIVE OF PETITIONS TO EN-**
 3 **FORCE UNITED STATES TRADE RIGHTS.**

4 (a) ACTIONS BY UNITED STATES TRADE REP-
 5 RESENTATIVE.—Section 301 of the Trade Act of 1974 (19
 6 U.S.C. 2411) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (1) in the flush text at
 9 the end, by striking “, subject to the specific di-
 10 rection, if any, of the President regarding any
 11 such action,”; and

12 (B) in paragraph (2)—

13 (i) in the matter preceding subpara-
 14 graph (A), by striking “in any case in
 15 which” and inserting “if”;

16 (ii) in subparagraph (A)(ii)(II), by
 17 striking “; or” and inserting a semicolon;
 18 and

19 (iii) by striking subparagraph (B) and
 20 inserting the following:

21 “(B) the foreign country has—

22 “(i) agreed to imminently eliminate
 23 the act, policy, or practice, or

24 “(ii) agreed to a solution to immi-
 25 nently relieve the burden or restriction on

1 United States commerce resulting from the
2 act, policy, or practice;

3 “(C) the Trade Representative finds that it
4 is impossible for the foreign country to achieve
5 the results described in subparagraph (B), but
6 the foreign country agrees to provide to the
7 United States compensatory trade benefits that
8 are equivalent in value to the burden or restric-
9 tion on United States commerce resulting from
10 the acts, policy, or practice;

11 “(D) in extraordinary cases, the Trade
12 Representative finds that the taking of action
13 under this subsection would have an adverse
14 impact on the United States economy substan-
15 tially out of proportion to the benefits of such
16 action, taking into account the impact of not
17 taking such action on the credibility of the pro-
18 visions of this chapter; or

19 “(E) the Trade Representative finds that
20 the taking of action under this subsection would
21 cause serious harm to the national security of
22 the United States.”; and

23 (2) in subsection (c)(1)(D)—

24 (A) by amending clauses (i) and (ii) to
25 read as follows:

1 “(i) imminently eliminate the act, pol-
 2 icy, or practice that is the subject of the
 3 action to be taken under subsection (a) or
 4 (b),

5 “(ii) imminently relieve the burden or
 6 restriction on United States commerce re-
 7 sulting from the act, policy, or practice,
 8 or”; and

9 (B) by amending subclause (I) of clause
 10 (iii) to read as follows:

11 “(I) are equivalent in value to
 12 the burden or restriction on United
 13 States commerce resulting from the
 14 act, policy, or practice, and”.

15 (b) INITIATION OF INVESTIGATIONS.—Section 302 of
 16 the Trade Act of 1974 (19 U.S.C. 2412) is amended—

17 (1) in subsection (a)(2), by striking the period
 18 and inserting “based on whether the petitioner has
 19 alleged facts that, if assumed to be true, would meet
 20 the criteria set forth in section 301(a)(1).”; and

21 (2) in subsection (c), by striking “(a) or”.

22 (c) CONSULTATIONS.—Section 303 of the Trade Act
 23 of 1974 (19 U.S.C. 2413) is amended—

24 (1) in subsection (a)(2), by striking “mutually
 25 acceptable resolution” and inserting “resolution ac-

1 ceptable to the Trade Representative, the foreign
2 country, and the petitioner (if any)”; and

3 (2) in subsection (b)(1)(A), by striking “after
4 consulting with” and inserting “with the consent
5 of”.

6 (d) IMPLEMENTATION OF ACTIONS.—Section
7 305(a)(1) of the Trade Act of 1974 (19 U.S.C.
8 2415(a)(1)) is amended by striking “, subject to the spe-
9 cific direction, if any, of the President regarding any such
10 action,”.

11 (e) MONITORING OF FOREIGN COMPLIANCE.—Sec-
12 tion 306(b) of the Trade Act of 1974 (19 U.S.C. 2416(b))
13 is amended—

14 (1) in paragraph (1), by striking “the Trade
15 Representative considers” and inserting “the Trade
16 Representative or the petitioner (if any) considers”;
17 and

18 (2) in paragraph (2)(A), by striking “the Trade
19 Representative considers” and inserting “the Trade
20 Representative or the petitioner (if any) considers”.

21 (f) MODIFICATION AND TERMINATION OF ACTION.—
22 Section 307(a)(1) of the Trade Act of 1974 (19 U.S.C.
23 2417(a)(1)) is amended by striking “, subject to the spe-

- 1 cific direction, if any, of the President with respect to such
- 2 action,”.

